IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 140 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI SONABHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 140 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

1. District Magistrate, Dahod, passed an order on January 1, 2002, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 ("PBM Act" for

short), detaining the petitioner under the provisions of the said Act.

2. The petitioner is alleged to have indulged himself in activities detrimental to smooth supply of essential commodities like wheat and rice. The detaining authority also observed that it is not possible to resort to less drastic remedies.

3. The only ground that is canvassed by learned advocate for the petitioner is that certain documents, though relied upon by the authority, are not supplied. The authority has, without undertaking proper exercise, recorded a satisfaction in respect of certain transactions and, therefore, the right of the detenu of making an effective representation is affected and the order is vitiated.

4. The petition is opposed to by learned Assistant Government Pleader Mr. Patel.

5. On a plain reading of paragraph 3 of the grounds of detention and comparing the same with the documents supplied to the detenu, it is clear that the detaining authority has referred to and relied on bills No.337 to 396, i.e. 60 in number, for recording a satisfaction about the false preparation of records of sale, etc. Mr. Patel, however, has drawn attention of this Court to paragraph 4 of the affidavit-in-reply filed by the detaining authority, wherein it is averred that cross-verification was done only in respect of 15 card holders. False bills have been supplied. It is also contended that the detenu had confessed in his statement about the preparation of false bills and, it was, therefore, urged that whatever bills were cross-checked by recording statements of those card holders have been supplied. However, considering the language employed in paragraphs 3 and 4 of the grounds of detention, it is amply clear that the authority has recorded a satisfaction about the non-supply of wheat/rice in respect of 60 bills, the office copy of which were checked by the authority concerned and, therefore, copies of those bills ought to have been supplied to the detenu to enable him to make an effective representation. That having not been done, the right of the detenu envisaged under Article 22(5) of the Constitution is adversely affected and the petition, therefore, deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated January

1, 2002, passed against the detenu is hereby quashed. The detenu-Maganbhai Sonabhai Baria is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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